IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Birdhi Chand vs. State of Rajasthan & Ors.
(S.B.Civil Writ Petition No.3332/07)

Dated:- 11.12.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Sajjan Singh, for the petitioner.
Mr.K.N.Joshi , for the respondents.

BY THE COURT:-

This writ petition is directed against demand notice dated 5.4.07 and 23.5.07 (Annexures 9 and 11) issued by the Executive Officer , Municipal Board, Sujangarh , whereby the petitioner has been directed to deposit compounding fee quantified at Rs.5,26,262/- on account of the unauthorised construction raised by him.

The brief facts of the case are that the petitioner was granted permission for construction of 20 shops on the land owned by him. The permission was granted to the petitioner by the respondent Board for construction of the shops as aforesaid on the ground floor.However, he proceeded to raise construction of basement so also on the first and second floor . The writ petitions (Nos.746/03 & 2393/03) were preferred by one Smt.Sunita Sharma, an office bearer of the respondent Board in the public interest before this Court alleging that in connivance

with the petitioner herein, a huge loss amounting to around Rs.6 lacs has been caused to the coffers of Municipal Board by not realizing conversion charges for change of the land use from residential to commercial purpose and so also the compounding fee for regularisation of unathorised construction in terms of the provisions of Rajasthan Municipalities(Compounding & Compromising Offences) Rules, 1966. While deciding the aforesaid writ petitions, vide judgment 8th August,06, with regard to the payment of compounding fee for regularisation of unauthorised construction, the Division Bench of this Court issued directions in the following terms:-

> "We, therefore direct that the Superintending Engineer Public Works Department, Churu to depute a civil engineer not below the rank of Executive Engineer to take actual measurements of the basement, first floor and second floor. On the basis of such measurements furnished by the Executive Engineer to the respondent Board, the Board shall undertake the exercise of calculating compounding charges @ Rs.7.5% of the entire unauthorised constructions made on the basement, first floor and second floor on the basis of rates mentioned in its proceedings dated 27.2.2002(Annexure 8 to writ petition no.746/03). The respondent no. 3 shall be required to pay the sum so arrived minus an amount of Rs.12,506/- already paid as compounding charges to the respondent Board. The Superintending Engineer, P.W.D.Churu shall undertake the exercise of taking measurements of the said unauthorised constructions within a period of one month from the date of receipt of copy of this order and the respondent Board shall issue a demand notice to the respondent no. 2 within 15 days of the receipt of such calculations from the Executive Engineer. The respondent no. 3 would make payment of the sum demanded from him by the Board within a period of 15 days from the date of receipt of the demand notice failing which the

> respondent Board would be free to take steps for demolition of the unauthorised construction in accordance with the provisions contained in sub-section(11) of Section 170 of the Act of 1959."

In pursuance of the directions of this Court, the Superintending Engineer deputed Executive Engineer, P.W.D. , Division Ratangarh to take measurement of basement, first floor and second floor i.e. unauthorised construction raised by the petitioner. The measurement taken was furnished by the Executive Engineer , P.W.D., Ratangarh to the Executive Officer of the respondent Board vide communication dated 1.9.06. On the basis of such measurement furnished by the Executive Engineer to the respondent Board, the amount of compounding fee @ 7-1/2% of the cost of entire unauthorised construction was calculated by the respondent Board quantified at Rs. 4,01,607/-.Vide demand notice dated 15.11.06(Annex.4), the petitioner was directed to deposit a sum of Rs.3,89,101/- against the compounding fee after adjusting an amount of Rs.12,506/- already paid by the petitioner. The petitioner was also directed to deposit the remaining amount of the conversion charges.The petitioner objected to the assessment of compounding fee by way of reply to the notice dated 25.11.06(Annex.5). In view of the representation made by the petitioner, the Executive Officer of the respondent Board vide communication dated 22.1.07 (Annexure.6)requested the Executive Officer, PWD, Ratangarh to take the measurement of the unauthorised construction in

presence of the petitioner. The Executive Engineer , PWD, Ratangarh in his turn informed the petitioner to remain present in his office for the purpose of the measurement of the unauthorised construction. It appears that the petitioner avoided the measurement, therefore, a notice dated 5.3.07 was issued by the respondent Board to deposit the amount quantified by the Board on the basis of the measurement already taken. In response to the said notice, the petitioner informed the respondent Board that the Executive Engineer, PWD, Ratangarh has fixed 12.3.07 as the date for taking measurement. According to the petitioner, the measurement was taken by the Executive Engineer, PWD, on 12.3.07 but, the respondent Board instead of computing the amount of the compounding fee on the basis of the measurement taken on 12.3.07, persisting in its obduracy is insisting for deposit of the demand already created on the basis of the earlier measurement which was admittedly taken in absence of the petitioner.

A reply to the writ petition has been filed on behalf of the respondent Board wherein it is stated that the measurement was taken in presence of the petitioner. A communication dated 1.6.07 sent by the Executive Engineer,PWD, Ratangarh to the Executive Officer of the respondent Board has been placed on record, wherein inter alia it has been stated that the measurement of the construction raised was checked in presence of the representative of the petitioner on 31.5.07. It is further

stated that the measurement taken has already been sent to the respondent Board vide communication dated 16.11.06. Thus, from the perusal of the said communication, it appears that the measurement already taken was found to be correct when it was checked in presence of the representative of the petitioner on 31.5.07. However, it does not make reference of the measurement said to have been taken on 12.3.07 , as alleged by the petitioner. In the additional pleas, it is stated by the respondents that aggrieved by the aforesaid demand raised and the recovery proceedings initiated , a suit for permanent injunction has also been preferred by the petitioner before the Civil Judge(S.D.), Ratangarh.

In terms of the directions issued by the Division Bench, the respondent Board was required to undertake the exercise of calculating compounding charges @ 7-1/5% of the cost of unauthorised construction on the basis of the measurement supplied by the Executive Engineer, deputed by the Superintending Engineer, PWD, Churu. Therefore, strictly speaking, the demand raised by the respondent Board on the basis of the measurement furnished cannot be faulted with. However, the learned counsel appearing on behalf of the respondent Board in all fairness stated that the respondent Board has no objection if the measurement of the unauthorised construction is again taken by the Executive Engineer, PWD, Ratangarh in presence of the petitioner on the date fixed by this

Court and the amount of compounding charges shall be calculated afresh accordingly. The learned counsel for the petitioner has also agreed to the proposal made by the learned counsel appearing on behalf of the respondent Board.

Accordingly, the writ petition is disposed with the direction that the measurement of the unauthorised construction raised by the petitioner shall be taken by the Executive Engineer, PWD, Ratangarh in presence of the petitioner and the Executive Officer of the respondent Board or his representative on 24.12.2007. The respondent Board shall raise the demand on the basis of the fresh measurement to be taken as aforesaid . The petitioner shall deposit the entire amount in pursuance thereof within a period of two weeks from the service of the demand notice.If the petitioner fails to remain present on the aforesaid date for the purpose of measurement of unauthorised construction then, the respondent Board shall be at liberty to enforce the demand already raised vide demand notice (Annex.9) dated 5.4.07.

The writ petition stands disposed of with the aforesaid directions. No order as to costs.

(SANGEET LODHA),J.